Here I would observe there was nothing improper as that would be the normal way of dealing with a heavy vehicle in the circumstances. He went on:—

"As I negotiated the roundabout one cyclist crossed my path from my left towards my right. When the cyclist was 6 to 7 ft. from me he crossed my path at an angle. I saw no signal given by him. I was unable to stop."

That is the evidence of the driver which the trial Judge clearly preferred as a matter of credibility to that of the cyclist. It is consistent with all the probabilities of the case. It is consistent with the damage suffered by the plaintiff, with the damage suffered by the bicycle and with the marks found on the omnibus.

In all the circumstances for myself I do not think we would be justified in interfering with the results at which the trial Judge arrived and I would dismiss the appeal with costs.

Hill and Good JJ. A., concurred.

Appeal dismissed.

Solicitors: *Seenivasagam & Son; Bannon & Bailey.*

SHARMA v. SINNAMA

[A.C.J. (Hepworth J.) September 1, 1961]

[Penang — Civil Appeal No. 6 of 1961]

Landlord and tenant — Recovery of possession — Control of Rent Ordinance, 1956, s.12(1)(f) — Hardship — Availability of alternative accommodation.

A landlord claiming possession under section 12(1)(f) of the Control of Rent Ordinance, 1956 must claim possession *bona fide* and on grounds which are not capricious and he must satisfy the Court that he reasonably requires the premises for his own occupation. The burden of proof then shifts on to the tenant to show that greater hardship would be caused by granting an order for recovery of possession than by refusing it. If the Court is left in doubt where the greater hardship lies, the landlord's claim will succeed.

In this appeal, the appellant contended that the learned Magistrate had not properly considered whether other accommodation was available for the respondent landlord when deciding the question of hardship.

Held: the respondent had established that she reasonably required the premises for her own use. It was true that she had taken no steps to find alternative accommodation but if there was suitable alternative accommodation available to her it was for the appellant to lead evidence to that effect. It was not open to the appellant to claim that because respondent had not sought alternative accommodation she was not entitled to an order, for though the availability of other accommodation is an important consideration, it is not the only consideration that a Court has to take into account.

Cases referred to:—

(1) *Booth* v. *Clive* 138 E.R. 327.

(2) *Cobb* v. *Lane* [1952] 1 All E.R. 1200.

(3) *Robinson* v. *Donovan* [1946] 2 All E.R. 731 at 732.

(4) *Sims* v. *Wilson* [1946] 2 All E.R. 261.

(5) *Coplans* v. *King* [1947] 2 All E.R. 393.

(6) *T.A.M. Abdul Aziz & Co.* v. *Shamsudeen Mohamed John* [1951] M.L.J. 141.

(7) *Kelley* v. *Goodwin* [1947] 1 All E.R. 811 at 812, 813.

CIVIL APPEAL.

Jag-Jit Singh for the appellant.

S. Thillaimuthu for the respondent.

Cur. Adv. Vult.

Hepworth J.: This is an appeal from the judgment of the Magistrate, Penang, awarding possession of premises No. 33, Selama Road, Penang, to the plaintiff under the provisions of section 12(1)(f) of the Control of Rent Ordinance, 1956.

The relevant parts of section 12(1)(f) of the Ordinance read as follows:—

"12. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

.....

(f) where the owner of the premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust and—

(i) there has been no change by purchase in the ownership of the premises since the fifteenth day of February, 1942; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice:

Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the Court is satisfied that, having regard to all the circumstances of the case, including the question whether other accommodation is available for the owner or the tenant, greater hardship would be caused by granting an order or judgment than by refusing to grant it:....."

I do not propose to go into the facts in detail nor do I propose to set out in detail the arguments of learned Counsel for the appellant. Suffice it to say that the main ground of appeal was that the Magistrate had not properly considered whether other accommodation was available for the owner or the tenant when deciding the question of hardship, and in this connection had taken into account facts of whose existence there was no evidence.

The expression "reasonably requires" in section 12(1)(f) means that a landlord must be claiming possession *bona fide* and on grounds which are not capricious (*Booth* v. *Clive*).[1] It is not for the Court to consider whether it is reasonable to make the order claimed. On this point section 12(1)(f) differs from section 12(1)(b) or (k), and from Rent Restriction legislation in the United Kingdom which contains an overriding proviso that the Court must always consider whether it is reasonable to make the order.

The question of whether the respondent, the owner of the premises, reasonably required the same for her own occupation was not seriously contested. The onus was on her of satisfying

the Court as to this and the learned Magistrate found that the respondent did reasonably require the premises for her own occupation and that of her family and that her claim was *bona fide*. With this finding I agree.

The tenancy had been determined by one year's notice to quit and there had been no change by purchase in the ownership of the premises within one year next preceding the date of such notice. Learned Counsel for the appellant argued that this notice was not good because it did not expire on the 31st December. In fact this submission was not pleaded nor was it set out as a ground of appeal and accordingly it was not open to the appellant to argue it at this stage. Be that as it may I am quite satisfied that in the circumstances of this case the one year's notice which was given by the respondent to the appellant was good.

It was also contended on behalf of the appellant that the respondent was in law a tenant of P.W.3 and could not therefore be ousted from P.W.3's house, and the case of *Cobb* v. *Lane*[2] was quoted in support of this contention. The Magistrate took the view that on the facts there was no tenancy between the respondent and P.W.3 and I can see no reason to disagree with him.

That being the case, what the Magistrate's Court was called upon to consider was the proviso to paragraph (f) of sub-section (1) of section 12 of the Ordinance.

The proviso to paragraph (f) is in *pari materia* with paragraph (h) of Schedule I of the English Act. In *Robinson* v. *Donovan*[3] Scott L.J. had this to say:—

> "The proviso to paragraph (h) of Schedule I is intended to give to the County Court Judge a discretion which will enable him to take into account all the circumstances on both sides to which reference is made in the paragraph and to make up his mind whether it is a case in which the tenant proves that, in spite of the accommodation being wanted by the landlord for his or her own personal residence, yet the hardship on the tenant would be so great that he ought to refuse possession."

This clearly sets out what the Magistrate had, in the present case, to consider.

The burden of proof is on a tenant to show that great hardship would be caused by granting an order for recovery of possession than by refusing it (*Sims* v. *Wilson* [4]; *Robinson* v. *Donovan supra*) and where there is evidence on which the finding of the trial Judge can be supported a higher Court will not disturb that finding. (*Coplans* v. *King*[5]; *T. A. M. Abdul Aziz & Co.* v. *Shamsudeen Mohamed John*).[6]

The question was therefore was the learned Magistrate right in finding that the appellant, the tenant, had not discharged that onus?

A Magistrate can only exercise his discretion in these cases upon evidence which is before him. The duty of producing evidence sufficient to satisfy the onus is on the tenant and if the tenant does not succeed in doing so he cannot be heard to blame the landlord for failing to bring evidence which would support the tenant's case. The appellant's case appeared to be argued on the basis that there was some sort of onus on the respondent to produce evidence which would support the Magistrate's decision and because she had failed to do so the Magistrate's decision should be reversed. It seems to me that this approach is quite wrong. The onus as I have already said lies on the tenant, so that if the Court is left in doubt where the greater hardship lies, the landlord's claim will succeed. (*Megarry, The Rent Acts*, 8th Edition, page 271). The landlord said that she had taken no steps to find alternative accommodation. This was a plain statement of fact. It would clearly have been to her advantage had she done so and been able as a result to bring convincing evidence that her failure to find such other accommodation was brought about by the absence of such other accommodation which was suitable. But it cannot be said that she did not look for alternative accommodation and therefore she is not entitled to an order. The fact that she did not look is a fact which the Court must bear in mind. But if there was other accommodation available which was suitable for the respondent it was for the tenant to lead evidence to that effect and not the landlord.

The only real grounds for complaint available to the appellant are that the learned Magistrate did say firstly, that there were numerous housing projects in Penang of which there was no evidence on the record, and secondly, that the appellant did not book a house with the Housing Trust until after the expiry of the Notice to Quit whereas he did in fact apply about the "middle" of 1960. But these have to be looked at against the background of the whole of the evidence and in my view they are not sufficient when so looked at to vitiate the conclusion at which the learned Magistrate arrived. The availability of other accommodation is an important consideration but it is not the only consideration. All the circumstances on both sides must be taken into account. As regards other accommodation the Magistrate came to the conclusion that the appellant had not tried his best.

Another consideration which weighed with the learned Magistrate was that the appellant was much sounder financially than the respondent of which there was ample evidence. He was entitled to have regard to the financial means of the tenant (see the judgment of Lynskey J. in *Kelley* v. *Goodwin*).[7]

He also considered, as he was entitled to do, the hardship to P.W.3, a person in close proximity to the respondent (see *Megarry, The Rent Acts*, 8th Edition, page 271).

I am of the opinion therefore that there is evidence upon which the finding of the learned Magistrate can be supported and accordingly it would be wrong for me to disturb that finding. The appeal is accordingly dismissed with costs.

Appeal dismissed.

KWEH KIM HOCK v. THE CITY COUNCIL OF SINGAPORE

[A.C.J. (Rose C.J.) September 13, 1961]

[Singapore — Magistrate's Appeal No. 158 of 1961]

Local Government Ordinance, 1957, s.248(3) and (7) — Abatement order — Whether extent of repairs justified a closing order — Test of "unfit for human habitation."

Under section 248(7) of the Local Government Ordinance, whether a house is unfit for human habitation does not depend on whether it is capable of repair. The relevant question to be decided is whether the nature and extent of the repairs that are necessary are reasonably justifiable having regard to the expense involved in relation to the value of the property.

MAGISTRATE'S APPEAL.

F. B. de Souza for the appellant.

K. T. Alexander (Crown Counsel) for the respondent.

Rose C.J.: A Nuisance Notice was served upon the appellant, with which, it is common ground, he failed to comply. The learned Magistrate thereupon imposed a small fine and made an Abatement Order under section 248(3) of the Local Government Ordinance (No. 24 of 1957).

The appellant contends that having regard to the condition of the premises it is unreasonable to call upon him to execute the necessary repairs and that the appropriate order should be a Closing Order under section 248(6) of the Ordinance.

Sub-section (7) of section 248 reads as follows:—

" (7) A closing order shall only be made where it is proved to the satisfaction of the Court that by reason of a nuisance a dwelling-house is unfit for human habitation, and, if such proof is given, the Court shall make a closing order and may impose a fine not exceeding four hundred dollars."

Whether or not a house is unfit for human habitation is of course a question of fact for the decision of the Magistrate. No express guidance is given in the Ordinance itself as to the matters to be taken into consideration in coming to a decision on the point but, as learned counsel for the appellant contends, guidance may perhaps be obtained from a consideration of section 4 of the (English) Housing Act 1957. It is to be noted — as might indeed be expected — that one of the matters to be considered in that section is the state of repair of the house in question. The learned Magistrate inspected the house and came to the conclusion that it was capable of repair.

Technically, no doubt, that is a correct finding as there must be few houses indeed which are incapable of repair. It seems to me, however, that the relevant question to be decided is whether the nature and extent of the repairs that are necessary in order to comply with the Nuisance Notice are reasonably justifiable having regard to the expense involved in relation to the value of the property.

Under sub-section (7) of section 248 it is clear that the onus is upon the appellant to satisfy the Court of the unfitness for human habitation of the dwelling house. And the matter that I have to consider is whether the learned Magistrate erred in holding that this onus had not been satisfied.

The appellant called an architect who submitted a detailed report upon the condition of the premises. In addition a number of photographs were exhibited which, to my mind, show clearly that the premises are in a state of considerable dilapidation.

The contents of the report are, in my opinion, incontrovertibly corroborated by the photographs and it would seem that the conclusion of the report, which is set out below, is justified:—

" *Conclusion*

In our opinion the evidence shows that the property is in such a dilapidated state that it is now beyond effective repair and that there is cause for concern over the safety and well being of its occupants."

The evidence adduced on behalf of the City Council is in no way so detailed or convincing. Moreover, there was no substantial challenge, on behalf of the City Council, either of the evidence of the appellant's architect or of the contents of the report; or of the photographs.

While one is naturally reluctant to interfere with a finding of fact of the lower Court except on the strongest grounds, I have come to the conclusion in the present matter that the appellant could hardly be expected to have done more to discharge the onus that was upon him. He calls a qualified architect, who supports his (the appellant's) own view of the matter; he submits a detailed report, accompanied by descriptive photographs. And these last matters are not, in substance, challenged by the City Council; nor are they even adverted to in the learned Magistrate's Grounds of Decision.

That being so, I have come to the conclusion that the learned Magistrate should have found that the house in question was unfit for human habitation, within the meaning of sub-section (7) of section 248.

A Closing Order is therefore the appropriate order, and the Abatement Order is cancelled accordingly and a Closing Order substituted.

No argument was addressed to me on the matter of the fine, which is manifestly not unreasonable and is affirmed.

Order accordingly.

Solicitors: *de Souza & de Souza.*